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Clerk of the Arizona Supreme Court
1501 West Washington St., Room 402
Phoenix, Arizona 85007-3329

Re: Petition R-13-0042 Rule 26(b)(4)(C) Arizona Rules of Civil Procedure

Dear Justices,

Please accept this letter as our agreement with the rule change petition. As the court is aware, this petition stems from the recent Court of Appeals decision in Sanchez v. Gama. Before the Sanchez decision, doctors and attorneys were able to work together well on civil cases. Doctors were fairly compensated for their time required at deposition or trial. The recent Sanchez decision turned a decades old gentleman's understanding between attorneys and physicians involved in civil litigation on its head. This has resulted in many injured people, due to no fault of their own, not having a medical provider who is willing to stand up for them if a legal case becomes necessary.

The daunting choice the medical doctor is faced with, who decides to treat a personal injury victim, is that the doctor can be compelled to spend several hours of their time at a deposition to discuss care that may have only taken a few minutes.

From an academic and professionalism stance, the hope is that the situation would not be abused. That is, that the defense attorneys would not spend an inordinate amount of time deposing a treating physician about a personal injury claim. However, the reality, in my experience, is to the contrary. That is, I have spent several hours in deposition with a treating physician who is being questioned about a very short course of patient care. Sometimes only a few visits with one or two pages of medical notes turns into a deposition of several hours.

The result is that a doctor's precious time is burned up by an opposing attorney. Understandably, many doctors choose not to get involved in treating injured people for the fear the doctor will have to spend several hours in a deposition without any reasonable compensation.

Doctors are in a unique position that is far different from a normal lay witness. Most witnesses become part of the case by happenstance. They witness an event or overhear a statement. Lay witnesses (such as someone who witnessed how an auto collision occurred) will not regularly or routinely be called to testify about other collisions.

Doctors, on the other hand, have a job which puts them in the unique position of seeing people on a daily basis for health problems. These health problems may result in legal action that require the doctor's assistance to explain injury or healthcare. Because of the nature of their work, doctors have the potential for being a witness for every patient they see. For instance, consider the emergency room doctor. It is a totally incongruous situation to classify a doctor's testimony as comparable as a witness to an auto collision.

Doctors should be compensated for the time spent on legal matters at a fair and reasonable rate. To do so otherwise will create a deep divide between the legal and medical community. A doctor's work as a healthcare provider is paramount. To ask a physician to donate his time on a legal matter for the benefit of the legal system, without recognition of the value of the doctor's time, is unjust. Why would any doctor want to participate in providing the facts and truth about a particular patient under the courts decision in Sanchez v. Gama?

It is easy to understand why doctors have and will continue to step away with helping patients with legal claims, in order to escape the onerous task of donating their time to the legal system.

Doctors do not need the attorneys or the legal system. The legal system needs the doctors. The doctors should be compensated for that need. The present system under the Sanchez v. Gama case is a penalty against physicians who treat injury patients. The present rule change protecting doctors and their ability to be compensated reasonably and fairly for participation on legal matters should be approved by the court.

Very truly yours,
THE VAKULA LAW FIRM, P.C.

/s/ Nicholas E. Vakula

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